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C O N F I D E N T I A L SECTION 01 OF 02 QUITO 002748

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E.O. 12958: DECL: TEN YEARS

TAGS: [PGOV](#) [PINR](#) [PREL](#) [EC](#)

SUBJECT: PRESIDENT PUSHES "PLAN B" FOR REFERENDUM

Classified By: PolChief Erik Hall for reason 1.4 (b&d)

11. (C) Summary: After being rebuffed by the Supreme Electoral Tribunal and Congress, President Palacio on December 1 announced he had issued a decree ordering the Supreme Electoral Tribunal to hold a referendum on January 122. The referendum would ask voters whether to convoke a national assembly to reinvent Ecuador's institutions and create a new constitution. The Tribunal is expected to rule on the validity of the decree by December 7. If it approves, voters will decide whether Ecuador enters a new period of uncertainty threatening important USG interests. End Summary.

12. (U) Palacio's controversial action came on the eve of Quito holidays and a Congressional recess, and, in the continued absence of a Constitutional Tribunal (since April), cannot be appealed on constitutional grounds. (Note: only the constitutional court, not the Supreme Court, can judge issues of constitutional interpretation here.) It came just after the constitutional committee of Congress ruled against authorizing his pending proposal to allow voters to decide between a constitutional reform assembly and an unbounded constituent assembly. This new move seeks the same outcome by a different means.

13. (U) In his presidential decree Palacio cites the sovereignty of the people and his constitutional authority to convoke referenda directly under Article 104 (2), which permits him to do so when "in his judgment, it deals with issues of transcendental importance for the nation," and apart from reform of the constitution. Critics charge that an assembly would inevitably involve reforming the constitution, and the referendum therefore must be certified as a matter of national urgency by Congress before being submitted to the TSE.

14. (U) The question to be put to the people by referendum on January 22, by decree, is: "Do you agree that a universal, direct election be convoked for representatives to a Constituent Assembly to reform institutionally the State and create a new constitution?" Assembly members would be selected by the same numerical formula currently used to select the 100 Congress members (two per province and additional representatives for every 200,000 inhabitants), each candidate would require petitions with support from .25 percent of the provincial electorate and be listed alphabetically. Qualifications would be the same as for congressional deputies. The assembly would be installed by 125 days after the referendum (May 27). Approval requires a simple majority of valid votes. Voting is obligatory.

Initial Reaction: Congress Furious

15. (U) Palacio sent a letter of explanation of his action to Congress president Wilfredo Lucero on December 1, which congressional sources shared with us. In it, Palacio cites as his mandate the demand of the Ecuadorian people, expressed in the events leading to the removal of ex-President Gutierrez, to "transform the state." After listing the litany of his previous attempts to respond to this demand, with no positive response from Congress, Palacio concludes that "it is clear that the Congress is not able or willing to tackle such reforms," prompting his unilateral action of going directly to the people. He then expressly disavows any electoral motive for doing so, and vows his government "will never give up the search for mechanisms to hold a national assembly to re-institutionalize the country and guarantee a democratic, fair and equal order."

16. (U) Congressional reaction to the president's move was swift, with congressional leaders going into extended session to plot strategy. The next morning, PSC congressman Luis Fernando Torres told the press that Palacio's move was unconstitutional and provided grounds (undermining the security of the state) to move to impeach. Congress will reconvene on December 7 to discuss the issue further.

TSE Votes

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17. (SBU) Action on the referendum proposal now moves to the Supreme Electoral Tribunal (TSE), comprised of the seven largest political parties. TSE president Gilberto Vaca (PSC) said the TSE would act on the president's request by December 17. Presidential spokespersons claimed the TSE was not empowered to vote on the issue, but must follow the presidential order without question.

18. (U) Most here expect the TSE to vote on whether the presidential decree is valid. The TSE had rejected Palacio's last attempt to bypass Congress with a referendum proposal, by a margin of 5-2, on October 20. The measure was supported only by indigenous Pachakutik and the (virtually non-existent) New Country Movement. The PSC, ID, PRIAN, PRE and MPD voted against. Some speculate (we have no confirmation) that the MPD and PRE might now also be willing to support Palacio's new referendum proposal. In return for a vote in favor, the MPD and Pachakutik are likely to demand that the fate of the FTA with the U.S. be turned over to the assembly to decide.

Comment

19. (C) Palacio's move, just a day after the swearing in of the new Supreme Court, returns his government to confrontation with Congress. Although well-timed to mute immediate reaction, it faces several hurdles before being implemented. It could well be blocked in the TSE, avoiding major repercussions. But if not, Congress could challenge the TSE or even seek to impeach Palacio. Failing that, the initiative could also be blocked at the polls, if the opposition is successful convincing voters that Palacio's motives are impure. Already critics are accusing Palacio of seeking to extend his mandate by delaying the October 2006 elections, since elections would presumably be affected by structural reforms. Given the opposition of major political parties, each step towards an assembly is also a step towards the premature end of Palacio's mandate. Palacio has repeatedly said he is willing to step down if the assembly requests.

110. (C) The assembly proposal is dangerous to USG interests because it would undermine stability by creating an alternate government which could dissolve Congress, dismiss the president, delay elections, and generate political and economic uncertainty. That said, barring fundamental changes, the next elected government will likely be weak and vulnerable to Ecuador's recent cycle of irregular changes of government. Given the level of political fragmentation here, we doubt an assembly can achieve positive reforms and fear it could become hostage to radical elements intent on symbolically asserting sovereignty by rejecting the FTA, expropriating Occidental Petroleum, and reviewing the status of the Cooperative Security Location at Manta. The Ambassador has made USG concerns about an assembly abundantly clear to Palacio, but Palacio remains insistent on expansive political reform. We will continue to urge caution, while seeking to shield USG interests from this latest populist storm.

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